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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-964

IRANIAN SHIPPING LINES, S.A.,

Petitioner,

v.

ARYA SHIPPING LINES, S.A.,
GEORGE L. MANTA, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS TO THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

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The respondent's counterstatement of the Question Presented (Jt. Opp. 2) dramatically underscores the critical misconception that permeates the ruling below and makes it so ominous a precedent.

In respondents' reading of the decision, the question arising therefrom is whether Rule 17(b) withdraws capacity to sue from

> ". . . a defunct Iranian corporation that had been dissolved under the law of Iran which provides no savings statute suspending the incidents of corporate death . . ."

Respondents may well be right in so reading the decision below. But if so, the decision is indefensible, for it has totally misconceived the choice of foreign law to be followed in assessing a defunct corporation's "capacity to sue" within the meaning of Rule 17(b). To wit:

(1) The courts below, like the respondents, have equated (a) the lack of "capacity to sue" with (b) a foreign corporation's dissolution as a matter of foreign law, regardless of the consequences under foreign law of such a dissolution.

(2) The courts below, like the respondents, have totally ignored the provisions of the Iranian Commercial Code of 1932 that give a dissolved corporation the necessary "capacity to sue" in order to wind up its affairs. See, e.g., Article 202 of the Code, stating that "the liquidation of companies, after their dissolution, will take place in conformity with the following Articles," including the Article 213 provision that gives directors of dissolved corporations the responsibility for liquidating their affairs.

(3) The courts below, like the respondents, have ignored the critical fact that the ISL certificate of dissolution[1] ex-

[1] This certificate of dissolution, issued by the Iranian Ministry of Justice, was introduced into the record by the respondents. App. 643. The statement in the certificate that ISL is "subject to the liquidation proceedings stipulated in the [1932 Code]" completely contradicts respondents' present argument (Jt. Opp. 10) that the contention that ISL is "subject" to such liquidation proceedings is "unsupported by any proof, expert or otherwise, and is directly contrary to the expert testimony of Dr. Sabi." Indeed, the certificate was introduced as an exhibit to Sabi's own affidavit.

pressly states that it shall be "subject to the liquidation proceedings stipulated in the [1932 Code]," see Pet. App. 5a, thereby automatically conferring on ISL the "capacity to sue" contemplated by the procedures established in Articles 202-218 of the 1932 Code. This impact of foreign law completely satisfied the "capacity to sue" concept of Rule 17(b).

(4) The courts below, like the respondents, have sought to avoid the fact that ISL was by operation of law made "subject to the liquidation proceedings" of the Code. They do so by reference to the failure of ISL to follow the voluntary methods of dissolving a corporation, such as a stockholder vote or an order of an Iranian court. Such voluntary methods have no relevance, of course, to a dissolution by operation of law, or to the capacity of an involuntary dissolved corporation to maintain an action. Once a corporation is dissolved, whether voluntarily or by operation of law, the Code contemplates that the dissolved corporation will have capacity to sue or be sued in order to wind up its affairs. And it is immaterial to the existence of that capacity that liquidators may not have been selected in Iran to wind up affairs in that country. Rule 17(b) refers to "capacity" – not to a particular implementation of that "capacity."

(5) Finally, the courts below, like the respondents, appear to have misconceived the nature of a "savings statute suspending the incidents of corporate death." The asserted absence of any such savings statute in Iranian law, say the

respondents, deprives ISL of any "capacity to sue" following its dissolution by operation of law. See Jt. Opp. 8.

The law of Iran, however, clearly suspends the incidents of corporate death for all dissolved corporations by entitling them to follow the procedures set forth in Articles 202-218 of the 1932 Code. Such liquidation "incidents," which include the right to sue and be sued, can be considered a "savings statute" in a realistic sense. And it is significant that there is no time limit placed on this kind of capacity to sue or be sued. ISL's "capacity to sue" remains unlimited and unconditioned by any passage of time.

In support of the notion that these liquidation procedures do not constitute a savings statute, respondents point only to a supposed concession by ISL in an opposing memorandum filed in the District Court that Iranian law "contains no savings statute." Jt. Opp. 6, 10. Such a concession does not exist. The memorandum in question, which is not in the record and which in no event could serve as proof of the Iranian law on the matter, simply stated (p. 2):

> "While there is no savings statute for a specified period of time, it is clear beyond doubt that *there is under Iranian law a 'Savings Statute' which expressly permits dissolved corporations to maintain actions such as the case at bar and that ISL's dissolution was specifically subject to such savings statute.*" [Emphasis in original.]

That statement remains totally accurate,[2] and now serves as further evidence that the respondents are determined not

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[2] This statement in the ISL memorandum was made in response to a claim in the respondents' opening memorandum (p. 6) that "Iranian law contains no savings statute whereby the automatic incidents of corporate death are suspended for a specified period of time." As noted above, the liquidation provisions of Iranian law constitute a savings statute, which is not conditioned on "a specified period of time."

to acknowledge the error of the courts below in not finding the Rule 17(b) capacity in the Iranian Code provisions respecting liquidation of dissolved corporations.

CONCLUSION

The ultimate importance of this case has been recently emphasized by this Court in its decision on January 11, 1978, in *Pfizer, Inc. v. Government of India, Imperial Government of Iran, and the Republic of the Philippines*, No. 76-749. The Court there noted that to deny a foreign plaintiff injured by an antitrust violation [such as ISL] the right to sue would defeat these purposes" of the antitrust laws – to deter violators of "the fruits of their illegality" and "to compensate victims of antitrust violations for their injuries."

For these reasons, supplementing those in the petition, the writ of certiorari should issue.

Respectfully submitted,

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